IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/07/2002

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

W.P. No. 11068 of 1995 and W.P. No. 11069 of 1995
and W.P. No. 11070 to 11074 of 1995

R. Baskar ... Petitioner in WP 11068
M. Baskaran ... Petitioner in WP 11069
Abel Sequeira ... Petitioner in WP 11070
Nambi ... Petitioner in WP 11071
A. Selvaraj ... Petitioner in WP 11072
Charles Balaji ... Petitioner in WP 11073
Kumaravel ... Petitioner in WP 11074

Versus

1. M/s. Auto Care Centre
No. 625, Anna Salai
Madras – 6

2. The Presiding Officer
1st Additional Labour Court ... Respondents in all the
Madrras Writ Petitions

Petitions under Article 226 of the Constitution of India praying for a Writ of Certiorari as stated therein.

For Petitioner : Mr. Chandru, Senior Counsel in
all the Writ Petitions

For Respondents: Mr. Ravindran for M/s. T.S.Gopalan
in all the Writ Petitions

:COMMON ORDER

The petitioners have filed the above writ petitions seeking for a Writ of Certiorari to call for the records relating to the Award of the 2nd respondent dated 04-04-1995, 06-04-1995, 07-04-1995, 06-04-1995, 07-04-1995, 07-0-4-1995, 06-04-1995 in I.D. Nos. 937, 946, 963, 947, 962, 948 and 938 of 1990 and quash the same.

2. In all these writ petitions, common question of law arise for

consideration, hence they are disposed of by a common order.

3. Heard both sides. The petitioners in the above writ petitions were appointed as apprentices in the 1st Respondent/Management on 14-03 -1980, 23-02-1987, 15-10-1984, 01-12-1981, 13-10-1986, 13-10-1986 and 13-08-1986 respectively. Later, after their tenure as apprentice, they were engaged as Casual labours for a monthly salary of Rs.1,410/- and they were denied employment by the 1st respondent on 19-04-1990, 31-03-1990, 15-03-1990, 29-03-1990, 30-04-1990, 31-03-1990 and 01-04 -1990 respectively. According to the petitioners, they have worked with the 1st respondent/Management continuously, without any break of service. The petitioners have raised dispute before the Government, which resulted in failure report and consequently they have filed I.D. Nos. 937, 946, 963, 947, 962, 948 and 938 of 1990 respectively before the 2nd respondent claiming reinstatement with backwages and other benefits. The 2nd respondent has passed separate award awarding compensation of Rs.8,214/-, Rs.3,423/-, Rs.5,476/-, Rs.6,845/-, Rs.4,10 7/-, Rs.4,107/- and Rs.4,107/- respectively and the amount was also received by the petitioners without prejudice. Aggrieved by the award passed by the 2nd respondent, the present writ petitions have been filed.

4. Mr. Chandru, learned Senior counsel appearing for the petitioners argued that the petitioners were working continuously after completion of their apprenticeship and were paid monthly salary on par with other workmen with normal benefits. The petitioners were terminated without following the mandatory provisions of Industrial Disputes Act. The learned senior counsel further argued that the labour court having found that the monthly salary with other benefits like provident fund and ESI contributions were made by the Management, it ought not to have come to the conclusion that the petitioners are not permanent workers. Hence the termination without assigning any reason is bad in law. The learned Senior counsel further contended that the petitioners have worked actually for 240 days in a calendar year as such they should have been deemed in continuous service and termination of their service without complying with the provisions of Section 25 F of the Act would render the order of termination abinitio void and they are entitled to reinstatement with back wages. Further, the labour court ought not to have relied on the evidence of MW1, who has admitted in his cross-examination that he was a retired person and not incharge of the respondent unit either at the time of appointment of the petitioners or at the time of termination. It is also argued by the learned Senior counsel that the labour court ought to have drawn adverse inference since the management failed to produce the documents required by the petitioners; and that the labour court rejected other reliefs but awarded only compensation.

5. The learned senior counsel appearing for the petitioners argued that when a need arise for appointment of more number of employees in order to meet the increased volume of work, and if such increase is fairly permanent in that it is expected to continue for quiet a long time, they could be only treated as permanent vacancies. If an employer with the object of depriving an employee of his legitimate dues, appoints a person in a permanent post as an apprentice and pays him less, it would amount to unfair labour practice. In support of this Contention, the learned Senior counsel relied on

a decision reported in Volume 48 FJR 191 (Bank of Madura Limited, Madurai Vs. Industrial Tribunal, Madras and others).

6. The learned senior counsel further argued that the workman are entitled to the relief of reinstatement with full back wages in case of unjustified termination of service even if some occasional hardship is suffered by the employer. The Courts have discretion to deny the relief only where a specific impediment by way of awarding such relief is clearly shown; whereas in the instant case no such specific impediments shown to deny reinstatement. In support of this, the learned senior counsel relied on 1980 4 SCC 443 (Surendra Kumar Verma and Others Vs. Central Government Industrial Tribunal-cum-Labour Court, New Delhi and another).

7. The learned senior counsel appearing for the petitioners argued that it is not necessary that an employee must have been in employment during the preceding period of 12 calendar months in order to qualify within the terms of Section 25 B of the Act. It is sufficient if the workman has actually worked for not less than 240 days in a period of 12 months. It is also further argued by the learned Senior counsel that the removal by an order terminating the services of workman must originally lead to the reinstatement of the service of the workman. It is as if the order has never been, and so it must ordinarily leads to backwages too. But only in exceptional circumstances which make it impossible to direct reinstatement with full back wages i.e., in cases of closure of the unit or the wo rkman concerned might have secured better or other employment elsewhere. No such exceptional circumstances found in the case on hand to order only compensation. In support of this contention, the learned senior counsel relied on a decision reported in 1981 1 LLJ (SC) 386 (Surendra Kumar Verma and others Vs. Central Government Industrial Tribunal, New Delhi)

8. The learned senior counsel further argued that denial of employment to the workman amounts to retrenchment. The expression retrenchment means termination of service of workman for any reason whatsoever than those expressely excluded by the definition in Section 2 (OO) of the Act. The learned senior counsel further contended that the expression retrenchment is not to be understood in its narrow, natural and contextual meaning but it is to be understood in wider literal meaning. The learned senior counsel canvassed that in this case, the denial of employment amounts to retrenchment. In the absence of compliance with the mandatory provisions of Section 25 F of the Act, the termination becomes void abinitio and the petitioners are entitled to reinstatement with all benefits. In support of this argument, the learned senior counsel relied upon a decision of the Supreme Court reported in 1990 II LLJ 70 (Punjab Land Development & Reclamation Corporation Ltd., Chandigarh etc., and several others Vs. Presiding Officer, Labour Court, Chandigarh etc., and Several others) and also 1996 2 LLJ 216 (The President, Srirangam Co-operative Bank Urban Bank Ltd., Vs. The Presiding Officer, Labour Court, Madurai and another).

9. The learned senior counsel argued that when an order of termination is void abinitio or invalid or inoperative, the labour court,

ordering for monetary compensation instead of reinstatement is invalid. In support of this contention, the learned Senior counsel relied on a decision of this Court reported in 1988 Writ Law Reporter – 82 (R. Ponnusamy Vs. The Presiding Officer, Labour Court, Coimbatore and another).

10. The learned senior counsel argued that in the case on hand, the termination is wrongful hence the relief of reinstatement with full backwages shall be available to all employees. Further, the respondent should specifically plead and establish that there was special circumstances which warrant either reinstatement or back wages but no pleading or special circumstance which warranted either nonreinstatement or non-payment of backwages. No such special circumstances were shown in the case on hand. In such circumstance, the petitioners are entitled to reinstatement with backwages. In support of this, the learned senior counsel relied on a decision of the Supreme Court reported in 2001 (1) LLJ 852 (Vikramaditya Pandey Vs. Industrial Tribunal, Lucknow and another).

11. The learned senior counsel further argued that the labour court, without proper appreciation of the documents passed a stereo type award though the facts are different in each and every case and prayed for quashing the same.

12. Mr. Ravindran, learned counsel appearing for the first respondent argued that the first respondent had established a training and experimental station in Chennai with 13 regular employees in the workman category. They have given apprentice training to 23 persons for a period of 11 months; that some of the apprentices, who have completed apprenticeship were continued to be engaged as casual labours and the petitioners are among them. In the year 1990, the first respondent could not get fresh batch of apprentices, with the result the service of apprentices, who have completed training beyond a period of 11 months including the petitioners were engaged as casual labours. It is further argued that the Central Government by notification dated 21-06-1984 declared the Industries engaged in manufacture or production of mineral oil (crude oil) motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like as a controlled industries. The said notification was extended periodically and even during the year 1990 when the cessation of engagement of the petitioners as such the 1st respondent is concerned, the appropriate Government under the Industrial Disputes Act was the Central Government. Before the labour court, the petitioners examined themselves as WW1 in the respective cases; that in the course of their cross examination, the petitioners have deposed that "they are not interested in employment as casual labours under the 1st respondent". Based on this admission, the labour court has granted only compensation. If, for any reason, the relief of reinstatement was granted, the petitioners could only be restored to their original position as casual labours but the petitioners are not interested to work as casual labours as such they are not eligible for any other relief. Further, the petitioners were working under different establishments as such they are not entitled to terminal benefits like notice and pay and compensation.

13. The learned counsel appearing for the respondents argued that the effect of an order of reinstatement is merely to set at nought the order of wrongful dismissal of the workman by the employer and to reinstate him in service as if the contract of employment originally entered into had been continuing. The benefit of reinstatement awarded to a workman does not become a term or condition of a contract and cannot be treated as a part of contract between him and the employer. The learned counsel further argued that there is no variation of those terms and conditions of the contract. The only thing which happens is that the workman is reinstated in his old service as before. In the instant case, since the petitioners were not interested to join as casual labours, the labour has rightly awarded compensation. In support of this contention, the learned counsel relied on a decision of the Supreme Court reported in 1957 (2) LLJ 696 (Shetty (S.S) Vs. Bharat Nidhi Limited).

14. The learned counsel for the respondent further argued that the Court shall not order for regularising a workman on the only ground that they have put in work for 240 or more days. The Courts can take judicial notice of the fact that such employment is sought and given directly for various illegal considerations including money. The employment is given first for temporary periods with technical breaks to circumvent the relevant rules, and is continued for 240 or more days with a view to give the benefit of regularisation knowing the judicial trend that those who have completed 240 or more days are directed to be automatically regularised. A good deal of illegal employment marked has developed resulting in a new source of corruption and frustration of those who are waiting at the Employment exchanges for years. The petitioners were given training for getting jobs elsewhere. On the basis of completion of 240 days they cannot seek for regularisation or reinstatement. In support of this argument, the learned counsel relied on a decision of the Supreme Court reported in 1992 (2) LLJ 452 (Delhi Development Horticulture Employees' Union Vs. Delhi Administration, Delhi and others).

15. The learned counsel for the first respondent argued that the petitioners have not canvassed before the labour court that they are permanent workman but only canvassed that the termination was illegal and claimed reinstatement as such it is not open to them to canvass the same before this Court. In support of this contention, the learned counsel relied on a decision of the Supreme Court reported in 1993 1 SCC 553 (Oriental Insurance Co Ltd., Vs. T. Mohammed Raisuli Hassan).

16. The learned counsel appearing for the first respondent also argued that the petitioners are not entitled to reinstatement on the ground that termination without complying with Section 25 F of the Act; that reinstatement is not the inevitable consequence of quashing an order of termination; compensation could be awarded in lieu of reinstatement and back wages. In support of this argument, the learned counsel relied on a decision of the Delhi High Court reported in 2000 (1) LLJ 714 (Delhi Transport Corporation Vs. Presiding Officer and another).

17. The learned counsel for the first respondent argued that the daily wager has no right for automatic regularisation on completion of number

of years nor can he claim right of enquiry and hearing. In support of this contention, the learned counsel relied on a decision of the Delhi High Court reported in 2000 II LLJ – 780 (Delhi State Industrial Development Corporation Ltd., Vs. J.K. Thakur).

18. The learned counsel further argued that casual workers terminated from services and ordering compensation in lieu of reinstatement, as done in the instant case is perfectly valid. Reinstatement would merely place the petitioners in the same position as they were earlier namely as casual labourers, hence relief of compensation awarded is appropriate. In support of this, the learned counsel relied on a decision of this Court reported in 2001 (3) LLN 807 (L & T Mcneil Ltd., Madras Vs. The Presiding Officer, Principal Labour Court, Madras).

19. The learned counsel appearing for the first respondent further argued that the discretion of interfering with the quantum of punishment is vested with labour court under Section 11 A of the Act; that interfering in the said discretion under Article 226 of the Constitution of India is not justified since High court is not an appellate authority. In support of this, the learned counsel relied on my judgment reported in 2002 (2) LLN 734 (Management of Kongarar Spinners Ltd., Udumalpet Vs. Presiding Officer, Labour Court, Coimbatore and another).

20. I have carefully considered the submissions made by either side and the citations. In the instant case, the admitted facts are that the petitioners are originally appointed as apprentices, later they were engaged as casual labourers and paid monthly salary of Rs.1,410/-. The respondent/Management has denied employment to the petitioners, consequently the petitioners raised dispute before the State Government, which resulted in failure report. Thereafter, they have not raised industrial dispute before the 2nd respondent. Indeed, the Management has raised preliminary objection that 1st respondent is an industry under the authority of the Central Government as such the labour court constituted by the Central Government alone can adjudicate the disputes. In support of the claim, the Management has relied on the notification dated 21-06-1984 issued by the Ministry of Labour and Rehabilitation wherein it is mentioned that controlled industry engaged in manufacture or production of mineral oil (crude oil) motor and aviation spirit, diesel oil, kerosene oil, fuel oil, diverse hydrocarbon oils and their blends including synthetic fuels, lubricating oils and the like as a controlled industry. The said industry is declared as controlled industry for the purpose of sub clause (1) of clause (A) of Section 2 of the Industrial Disputes Act. The said notification has been extended from time to time and the same was in operation during the period of dispute between the parties.

21. As rightly pointed out by the learned senior counsel appearing for the petitioners that the 1st respondent is not covered under the notification since it is not engaged in the business of manufacture or production as defined in the notification. The other argument of the learned senior counsel for the petitioners is that the labour court has passed the order rejecting the claim as against which no appeal was preferred, hence the same has become final, while so, it is not open to the respondent /management

to canvass the same before this Court. I agree with the learned senior counsel for the petitioners and reject the plea of the respondent/Management.

22. As rightly pointed out by Mr. Chandru, learned Senior counsel appearing for the petitioners, the labour court in Page 6 of the award has erroneously stated that all the petitioners are employed elsewhere, but the petitioner in WP No. 11068 of 1995 alone is employed.

23. According to the respondent/Management, they have established training and experimental station at Madras with a sanctioned strength of 15 regular employees of all categories. The Management has decided to impart training for 23 apprentices, including the petitioners herein and the object of the training programme is that after completion of the training period of 11 months, they will get employment in retail outlets. During the relevant period, no sufficient number of candidates were available for appointment of apprentice and therefore the petitioners were engaged as casual labourers. It is seen from the evidence that the petitioners are employed continuously for a period of 10 years and 1 month, 3 years and 8 months, 3 years and 7 months, 8 years and 4 months, 3 years and 6months, 3 years and 7 months and 5 years and 6 months respectively and they were paid at the rate of Rs.35/-, payable at the end of the day. However, they were paid monthly salary of Rs.1,364/- to Rs.1,440/- taking into account the number of working days.

24. The Management has not specifically disputed that the petitioners have completed 240 days in a calendar year, but they have stated that the idea of giving training programme is only to equip them and to get employment elsewhere. According to the respondent/Management, they have set up retail outlets in various places, premises, equipments and tanks are owned by the respondent/Management and the dealers were engaging workman and absolutely, there is no necessity for them to appoint a person as Pump operator. In order to afford opportunity to the freshers, the petitioners service are not required which caused cessation of their employment, as per the instructions given by the zonal office.

25. The Management has no scheme for appointing permanent employees of this nature, which according to them is not required. In case of appointing permanent employees, they should follow the norms and guidelines prescribed by the Central Government. In support of this contention, the Management has marked Exs. M5 to M13 which are selfexplanatory to show that training programme was given to young men. According to the management, the person employed under the said scheme cannot claim any remedy on the ground that he has completed 240 days in a calendar month.

26. I am satisfied that the scheme is meant for the object of imparting training to the petitioners as apprentices and not to provide right to work. Further, the petitioners are neither issued appointment orders nor termination orders. Indeed, the case before the labour court was not for regularisation, but only for reinstatement. When considering the case of the petitioners that they have undisputedly worked continuously for several years

as mentioned supra, they are entitled to the protection under Section 25 F of the Industrial Disputes Act.

27. The labour court held that the petitioners were entitled to retrenchment compensation as contemplated under Section 25 F of the Industrial Disputes Act and awarded the same, but refused to grant the relief of reinstatement and back wages. The Management has not challenged the same. The labour court refused to grant reinstatement on the ground that the petitioners are not interested to join as casual labours. When the petitioners themselves are not interested for reinstatement in the original employment as casual labours, while moulding the relief, the labour court has awarded only compensation computing 1 5 days salary for every year and one month salary in lieu of notice. The relief of reinstatement is a normal Rule in the cases where Section 25 F of the Act has not been followed. Whereas, in this case, the petitioners are not interested to join in the original post as casual labour, hence the labour court has rightly rejected the claim of reinstatement made by the petitioners. Considering the circumstance of the case, I feel the retrenchment compensation awarded by the labour court alone not sufficient to meet the ends of justice.

28. Hence, I modify the award passed by the labour court to the extent that the petitioners are not only eligible to retrenchment compensation awarded by the labour court but in addition a sum of Rs.30,000/- each. The respondent/Management is directed to pay the said amount after deducting the amount paid, if any, within a period of three months from the date of receipt of a copy of this order. In other aspects, the award passed by the labour court is confirmed.

In the result, the writ petitions are allowed to the extent indicated above. No costs.

15-07-2002
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Index : Yes
Internet : Yes

To
The Presiding Officer
1st Additional Labour Court